

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GERALD THOMPSON and
CYNTHIA JOHNSON,

Plaintiffs,

vs.

WYNDHAM RESORT
DEVELOPMENT CORPORATION,

Defendant.

4:21-CV-3305

ORDER

The defendant in this case has filed a motion to dismiss ([filing 6](#)) pursuant to [Fed. R. Civ. P. 12\(b\)](#), and the plaintiffs' response brief is due today. See [NECivR 7.1\(b\)\(1\)\(B\)](#).¹ The plaintiffs have asked for additional time, expecting to actually file an amended complaint. See [filing 9](#). The Court will grant that motion, and a bit more.

The plaintiffs' motion explains that they intend to file a motion for leave to amend their complaint. See [filing 9](#). As of today, that would be unnecessary: a plaintiff may file an amended pleading once as a matter of right within 21 days after service of a [Rule 12\(b\)](#) motion. [Fed. R. Civ. P. 15\(a\)\(1\)\(B\)](#). But the Court can extend that deadline too. See [Rule 6\(b\)\(1\)\(A\)](#). And extending both deadlines is the better course here.

If the plaintiffs' motion for leave to amend their complaint was contested by the parties, the Court would be confronted with a motion to dismiss and a separate motion for leave to amend, asking the Court to answer potentially

¹ The three-day mailing rule does not apply here, because service of the defendant's motion was effected electronically. See [Fed. R. Civ. P. 6\(d\)](#); [NECivR 6.1\(b\)](#).

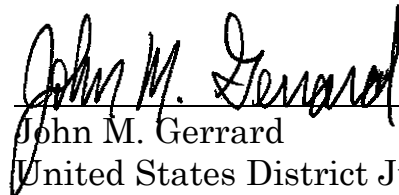
intertwined questions regarding the sufficiency of two different pleadings to decide two different motions. The more efficient approach is to permit the plaintiffs additional time to decide whether to amend their pleading as a matter of course or simply oppose the defendant's motion to dismiss, and then—if the plaintiffs amend their complaint—permit the defendant to raise its defenses in a single motion or responsive pleading as it sees fit. Accordingly,

IT IS ORDERED:

1. The plaintiff's motion to extend ([filing 9](#)) is granted.
2. On or before December 21, 2021, the plaintiffs may *either* respond to the defendant's motion to dismiss ([filing 6](#)) *or* file an amended complaint.

Dated this 24th day of November, 2021.

BY THE COURT:



John M. Gerrard
United States District Judge